

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
April 21, 2008 Session

**WILLIAM HEGGER v. FORD MOTOR COMPANY**

**Direct Appeal from the Chancery Court for Davidson County  
No. 04-2172-IV Richard H. Dinkins, Chancellor**

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**No. M2007-00759-WC-R3-WC - Mailed - July 31, 2008  
Filed - September 2, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee developed carpal tunnel syndrome, which was accepted as compensable by Employer. The trial court found that Employee had sustained no vocational disability as a result of the condition, and therefore awarded 2% permanent partial disability to the arm, which was the anatomical impairment assigned by two of the three doctors to testify. The trial court also ordered that Employer was no longer required to provide medical treatment for the condition. On appeal, Employee contends that the award of permanent disability benefits is inadequate, and that the trial court erred by terminating future medical benefits. We affirm the disability award, but modify the closure of medical benefits.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Chancery Court Affirmed in Part and Modified in Part.**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Joseph M. Dalton, Jr., Nashville, Tennessee, for the appellant, William Hegger.

Sarah H. Reisner and David M. Drobny, Nashville, Tennessee, for the appellee, Ford Motor Company.

**MEMORANDUM OPINION**

**Factual and Procedural Background**

William Hegger ("Employee") alleged that he developed carpal tunnel syndrome of his right arm as a result of his employment. He began working for Ford Motor Company ("Employer") in August of 1996. He started as a cleaner, then became an inspector/packer and later became a "nail

bander.” The latter job involved securing wooden boxes in which glass had been packed for shipment. It required extensive hammering and use of a nail gun. In 1998, he developed symptoms of numbness and tingling in his hands. He reported the symptoms to Employer, and the claim was accepted as compensable. He was referred to Dr. Jory Simmons. Dr. Simmons ordered EMG testing which revealed mild to moderate bilateral carpal tunnel syndrome. He provided conservative treatment to Employee from December 1998 until September 2000.

In May 2000, he was referred to Dr. Phillip Coogan, an orthopaedic surgeon. Dr. Coogan provided additional conservative treatment. It is not clear from the record how often Employee was seen by Dr. Coogan, or over what period of time. The record contains a note from Dr. Coogan dated May 1, 2000. At that time, Employee’s complaints were limited to his right arm.

Employee was terminated in May 2003 as a consequence of vandalizing a co-workers car due to a personal dispute. In December 2003, Employee requested an additional panel of physicians for medical treatment. A panel was provided. Employee was see by Dr. Douglas Weikert, an orthopaedic surgeon specializing in treatment of the hands, beginning in January 2004.

Dr. Weikert ordered a new EMG study, which showed the presence of mild carpal tunnel syndrome on the right side. However, Dr. Weikert described the results of his clinical examination of Employee as “not really obvious for carpal tunnel [syndrome].” He recommended conservative treatment, and followed Employee until March 2004, when he found him to be at maximum medical improvement. He saw Employee on one additional occasion, in January 2005. Dr. Weikert’s diagnosis was mild right carpal tunnel syndrome. He placed no restrictions upon Employee’s activities, and assigned an impairment of 2% to the right arm.

Dr. David Gaw, an orthopaedic surgeon, reviewed Employee’s medical records at the request of his attorney in July 2005. Dr. Gaw agreed with Dr. Weikert’s findings. He believed that Employee had received appropriate treatment for his condition. He also agreed with Dr. Weikert’s impairment rating.

On his own initiative, Employee consulted Dr. Garrison Strickland, a neurologist. Dr. Strickland first saw Employee in August 2005. He took a history from Employee, conducted an examination, and also performed EMG testing. He was not informed of the previous medical treatment by Dr. Simmons, Dr. Coogan or Dr. Weikert, nor was he provided with records of that treatment. Dr. Strickland’s testing revealed moderate to severe carpal tunnel syndrome on both sides. He assigned 13% impairment to each arm as a result of this condition.

Dr. Strickland’s EMG studies also revealed the presence of a generalized peripheral neuropathy in Employee’s hands and arms. He testified that this condition was the result of diabetes, which Employee had suffered from for many years. Dr. Strickland testified that the symptoms of diabetic neuropathy can “mimic” the symptoms of carpal tunnel syndrome. He also testified that diabetics are at greater risk to develop carpal tunnel syndrome than the general population. Both Dr. Gaw and Dr. Weikert gave similar testimony concerning the relationship between diabetes and carpal tunnel syndrome. All three doctors testified that Employee’s carpal tunnel syndrome had apparently worsened significantly from the date he was released by Dr. Weikert (March 2004) until Dr.

Strickland's examination. None of the doctors attributed the change in Employee's condition to his work for Employer, because he had not been employed there for over two years.

On the date of trial, Employee was sixty years old. He had received a Bachelor's degree in business administration from Tennessee State University. He had also completed a program in HVAC from Nashville Area Vocational School. He had served two years in the Marines, and also in the Tennessee National Guard. Prior to working for Employer, he had been a counselor for the Veterans' Administration, a production manager at Genesco, and a restaurant manager. After leaving Employer, he had worked briefly for a temporary agency. He also managed some rental properties which he owned.

The trial court issued its findings in a written memorandum. It found that Employee had sustained a compensable injury which resulted in a 2% anatomical impairment to the right arm. It further found that the injury had caused no vocational disability. It therefore awarded permanent partial disability for 2% to the right arm. The court also ruled that Employer was no longer obligated to provide medical care to Employee for his right arm. Employee has appealed, contending that the trial court's award of 2% permanent partial disability to the right arm was inadequate, and also that the trial court erred in ordering that Employer was not responsible for future medical care.

### **Standard of Review**

This Court reviews a trial court's findings of fact in a workers' compensation case de novo with a presumption of correctness, "unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's factual findings. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). We extend no deference to the trial court's findings when reviewing documentary evidence such as depositions, however. *Id.* As to questions of law, our standard of review is de novo with no presumption of correctness. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 825 (Tenn. 2003).

### **Analysis**

#### **1. Extent of Disability**

The trial court found that "the 2005 EMG and the higher impairment rating represent the gradual exacerbation of [Employee's] carpal tunnel syndrome. This gradual exacerbation cannot be held to be work-related." On that basis, the court adopted "the 2% impairment rating given [Employee] by Dr. Weikert and Dr. Gaw for his work-related right carpal tunnel injury." Employee argues, without elaboration, that the trial court should have based its award upon the impairment rating assigned by Dr. Strickland. In response, Employer contends that the trial court's finding was correct for several reasons. First, it suggests that Dr. Weikert was better qualified than Dr. Strickland, in that he was an orthopaedic surgeon who specialized in hand problems. Further, Dr. Weikert saw Employee nearer the time that the condition arose, and he was the treating physician. Employer also submits that Dr. Gaw's agreement adds additional weight to Dr. Weikert's opinion.

Finally, it should be noted that Dr. Strickland himself testified that an unspecified portion of his impairment rating was attributable to Employee's diabetic neuropathy.

In reaching its conclusion, the trial court relied upon the testimony of all three doctors who testified in the case. The court specifically referred to Dr. Strickland's statement that "I don't see that his work could have been related to the worsening between [the] two times of evaluation, because he wasn't working." The court also cited the testimony of Dr. Weikert's that "I think . . . the worsening of the EMG's in 2005 compared to those that I looked at when I saw him would have to be due to something other than work. And the most likely culprit is his diabetes[,] and of Dr. Gaw, "I don't think the worsening of that condition could be assigned to [Employer] if he'd not worked there during [the previous two and one-half years]."

Employee also argues that his vocational disability is greater than his impairment because the condition affects his dominant hand. The trial court found:

[Employee] is college educated with a vast skill set. He is capable of working in many fields, including restaurant management, counseling, and order filling. Further, [he] is under no work restrictions from any physician. Accordingly, this Court finds that [Employee] retains no vocational disability as a result of his work-related, right carpal tunnel injury.

In addition to those observations, we note that Employee continued to work for Employer for roughly five years after the initial onset of his symptoms. During that time, he required occasional conservative medical care. His termination was unrelated to his injury. After that event, he continued to receive such treatment, without any appreciable change in his symptoms, for another two and one-half years. Based upon these factors, we conclude that the evidence does not preponderate against the trial court's ruling on this issue.

## **2. Termination of Medical Benefits**

Employee argues that the trial court erred in determining that Employer was no longer responsible for medical treatment. His argument merely states that Dr. Strickland thought he would benefit from surgery, and therefore Employer should be required to provide that treatment.

Employer contends that the trial court acted correctly, because the proof established that Employee's condition had worsened after his employment had ended, due to factors other than his work. On that basis, it argues that the need for any future treatment would not be the result of the original injury. Employer relies upon the testimony of Dr. Weikert and Dr. Gaw. Those physicians, who saw Employee nearer in time to Employee's last day of work for Employer, did not consider surgery to be necessary.

The court's action raises an interesting question which neither party addresses in depth. Tennessee Code Annotated § 50-6-204(a) requires an employer to provide all medical treatment "made reasonably necessary" by a compensable injury, without regard to any time frame. In effect, the trial court ruled that Employee's diabetic condition was an intervening cause for any specific or

potential medical care, which would relieve Employer of its obligation. In general, the causal relationship between the need for a particular medical procedure or course of treatment should be considered at the time such treatment is sought. See, *Underwood v. Liberty Mut. Ins. Co.*, 782 S.W.2d 175, 176 (Tenn. 1989), *abrogated on different grounds by Bazner v. Am. States Ins. Co.*, 820 S.W.2d 742, 745 (Tenn. 1991). In this case, the trial court found that Employee's condition was worsened by a cause unrelated to his work, a finding which we have affirmed. In light of that, the surgery suggested by Dr. Strickland is not causally connected to the original work injury. The trial court was therefore correct in holding that Employer is not required by the workers' compensation law to pay for that surgery. However, we conclude that it was premature for the trial court to determine that there is no situation in which some proposed future treatment could be found to relate to the initial work-related injury which would establish such a relationship. Whether or not a particular medical treatment is "made reasonably necessary" by Employee's work for Employer prior to 2003 is a question which must be answered based upon the proof presented at the time the treatment is proposed. *Id.*; see *Roark v. Liberty Mut. Ins. Co.*, 793 S.W.2d 932, 935 (Tenn. 1990), *abrogated on different grounds by Bazner v. Am. States Ins. Co.*, 820 S.W.2d 742, 745 (Tenn. 1991). It is admittedly difficult to conceive a situation in which some proposed future course of treatment could be found to arise from the original work injury, rather than subsequent complications from diabetes or other factors. Nevertheless, we are not in a position to make a finding at this time that such a situation could never arise. It is therefore necessary to modify the judgment to provide that Employer remains liable for medical care arising from the original injury.

### **Conclusion**

The judgment is modified to provide that Employer is liable for medical care made reasonably necessary by his work injury. The judgment is affirmed in all other respects. Costs are taxed one-half to the appellant and his surety, and one-half to appellee, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed one-half to the appellant and his surety, and one-half to appellee, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**